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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,751	08/24/2001	Armin Amrhein	A34487 071308.0210	4100
7590	03/23/2004		EXAMINER	
Andreas Grubert Baker Botts L.L.P. One shell Plaza 910 Louisiana Street Houston, TX 77002-4995			BAHTA, KIDEST	
			ART UNIT	PAPER NUMBER
			2125	12
DATE MAILED: 03/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/938,751	AMRHEIN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Kidest Bahta	2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 January 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                          |                                                                             |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                         | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .                                              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                          | 6) <input type="checkbox"/> Other: _____ .                                  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 4-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoenninger et al. (U. S. Patent 6,260,058).

Regarding claims 4, Hoenninger discloses a method of programming cyclical machines, in particular production machines (column 12, lines 51-56), having an industrial controller, comprising the step of: providing the industrial controller (Fig. 1, element 10) with a running system, the controller having prioritized running level (running level is same as priority level) and tasks, with at least one sequential running level being created (abstract, i.e. controlling industrial operations and processes, a complex control program is processed by a microprocessor of a controller 10 under real-time conditions. The complex control program is divided into tasks. Each task

Art Unit: 2125

assigned a priority and activation event.), formulation a machine sequence in a sequential program (Fig. 5, Fig. 6, table 40, Fig. 7, column 7, lines 22-25; i.e., program sequence for fuel injection in an internal combustion engine.); the sequential program including specific mechanisms that enable a waiting for condition (Fig. 3) to be satisfied to be carried out with high priority and after the waiting condition has been satisfied, to carry out the subsequent program sequence with high priority up to a defined user-programmed end (column 2, lines 6-14; column 3, lines 49-54; column 4, lines 6-13; column 6, lines 1-10 and 50-57; column 11, lines 1-24; Fig. 3 and Fig. 8), the running levels being assigned system or user program (column 2, lines 39-58); utilizing the sequence program in the controller (Fig. 2; column 5, lines 50-55; i.e., program sequence in a motor vehicle controller).

Regarding claims 5 and 7, Hoenninger discloses the running levels are created from system levels or user levels (column 5, lines 5, line 50 - column 6, lines 10; column 9, lines 20-65; i.e., complex control program is usually subdivided into a number of different tasks... in this interrupt service routine, a check is performed to determine whether a new task should be activated at the current count of the time counter. To coordinate the task execute command, it is advantageous to assign a certain priority (running level) to the individual tasks (system level) to indicate the urgency of processing the task.)

Regarding claim 6, Hoenninger discloses the running level model is clock (column 7, lines 42-45; i.e., it is executed every 10 ms by time controlled method) and wherein the basic clock may be derived from any of an internal timer, internal clock of a

Art Unit: 2125

communication medium, an external device or a variable which belongs to the technological process (Fig. 1, element 23, i.e., timer counter is some as internal timer).

***Response to Arguments***

3. Applicant's arguments filed January 27, 2004 have been fully considered but they are not persuasive.

Regarding independent claim 4, applicants argue that in Hoenninger, the sequence is not achieved by way of a sequential program as in the present invention. However, the examiner disagrees since the claims are so broad that the claims can read in Hoenninger the reference and claim does not specifically require that the tasks are not divided in sub-task.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 2125

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning communication or earlier communication from the examiner should be directed to Kidest Bahta, whose telephone number is (703) 308-6103. The examiner can normally be reached on M-F from 7:30 a.m. to 4:00 p.m. If attempts to reach the examiner by phone fail, the examiner's supervisor, Leo Picard, can be reached (703) 308-0538. Additionally, the fax phone for Art Unit 2125 is (703) 308-6306 or 308-6296. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist at (703) 305-9600.

Kidest Bahta

March 15, 2004



LEO PICARD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100